

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DISABLED PATRIOTS OF AMERICA, INC., a
Florida Non Profit Corporation, and MARCUS
INGRAM, Individually,

Civil Case No.: 1:07-cv-00299-JTC

Plaintiffs,

vs.

NF HOTEL, LLC, a New York Limited Liability
Company,

Defendant.

**STIPULATION FOR APPROVAL AND ENTRY OF
CONSENT DECREE AND DISMISSAL OF CASE WITH PREJUDICE**

Plaintiffs and Defendant, by and through undersigned counsel, hereby move this Court to approve and enter judgment on the Proposed Consent Decree annexed hereto as Exhibit A ("the Consent Decree").

Pursuant to Title III of the Americans with Disabilities Act this Court is authorized to enter a Consent Decree requiring a public accommodation to alter facilities to make such facilities readily accessible to and useable by individuals with disabilities to the extent required by Subchapter III of Chapter 126 of Title 42 of the United States Code 42 USC § 12188 (a)(2) 2000.

WHEREFORE, Plaintiffs and Defendant respectfully request this Court to approve and enter judgment on the Consent Decree and retain jurisdiction to enforce the Consent Decree and

for determination of the amount of attorneys' fees, costs, expert fees and litigation expenses to be awarded to plaintiffs and dismiss the case with prejudice.

Date: 1-11-08

FOR THE DEFENDANT:

By: 

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So Ordered
Just. Anton
1/28/08

FOR THE PLAINTIFFS:

By: 

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HEMMING & STAEHR, P.C.

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EXHIBIT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JAN 11 2008

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Florida Non Profit Corporation, and MARCUS
INGRAM, Individually,

Plaintiffs,

Civil Case No.: 1:07-cv-00299-JTC

v.

NF HOTEL, LLC, a New York Limited Liability
Company,

Defendant.

CONSENT DECREE

This Consent Decree is entered into by and between and, hereinafter sometimes referred to as "Plaintiffs," and, hereinafter sometimes referred to as "Defendant," on the date last executed below.

WHEREAS: The Defendant's property is a hotel known as Quality Hotel & Suites at the Falls and is located at 240 Rainbow Boulevard, Niagara Falls, New York 14303. Plaintiffs claim that there are architectural barriers existing at the Defendant's property that constitute violations of the Americans With Disabilities Act that unlawfully limit the Plaintiffs' use of the property. Defendant does not admit any of the allegations of the Plaintiffs' Complaint. However, in consideration for resolving all matters in dispute, the parties have agreed to the following terms and conditions subject to the Court entry of an Order Approving and Entering the Consent Decree.

1. All alterations, modifications, and policies required by this Consent Decree shall be completed prior to January 1, 2010. A final property re-inspection conducted by Plaintiffs will take place after January 1, 2010, to ensure that the modifications to the subject property required below have been completed. Plaintiffs' counsel, expert(s) and/or representatives shall be provided reasonable access to the building during that time period to conduct a re-inspection and to verify commencement, progress and completion of the work required hereby.
2. Defendant shall pay plaintiffs' counsel, Fuller, Fuller & Associates, P.A., and Jonathan E. Staehr, Esq. for plaintiffs' reasonable attorneys' fees, litigation expenses and costs incurred in this matter, and plaintiffs' expert, Mr. David Pedraza, reasonable expert fees and costs incurred in this matter. The amounts to be paid shall be established by counsel for the parties by separate agreement.

3. When all issues are resolved between the parties, the parties hereby agree and will request the Court to approve and enter the Consent Decree, providing for retention of jurisdiction by the Court to enforce, as necessary, the terms of this Decree.
4. The parties warrant that all the provisions of this Consent Decree will remain in strict confidence, except where disclosure is required under appropriate legal process or is necessary to resolve the issue of attorneys' fees and/or costs. The parties agree to refrain from making any statements about the lawsuit, the allegations contained herein, or this Consent Decree except that the Defendant may share this Consent Decree with any prospective purchasers and with any parties engaged to perform the barrier removal obligations herein.
5. In any action to enforce this Consent Decree, the prevailing party shall be entitled to attorneys' fees, costs and expert fees.
6. This Consent Decree shall be binding upon and inure to the benefit of the parties hereto and their respective successor and/or assigns. The parties shall perform their obligations under this Consent Decree in good faith.
7. The parties agree and acknowledge that the Defendant may implement alternative actions that would provide equivalent facilitation to those actions specified in Exhibit A – Settlement Actions, as long as Defendant timely informs Plaintiffs in writing, through counsel, of the alternative actions being taken.
8. The parties agree that any delays in making the modifications to the property as provided for pursuant to this Consent Decree caused by third parties, including but not limited to construction contractors, or city building officials, inspectors, or permitting departments, will not be deemed to violate the compliance dates herein as long as the Defendant makes a good faith effort to effect implementation as soon as reasonably possible thereafter.
9. Upon the Court's approval of this Consent Decree and upon the Defendant's full compliance with the terms and conditions of this Consent Decree, Plaintiffs hereby release and discharge Defendant, its officers, employees, agents, successors and assigns from any and all claims and causes of action related to the property at issue in this action which they have had arising under the Americans With Disabilities Act.
10. The parties acknowledge that the modifications described in this Consent Decree shall be implemented according to the standards set out in 28 CFR Part 36 § 36.304(d)(7-1-94 edition). All references to figures in the paragraphs below refer to those that accompany the ADA-SAD.

11. This Consent Decree can be executed in any number of counterparts, each of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. A facsimile copy of any parties signature shall be deemed as legally binding as the original signatures.
12. The Defendant is advised that under certain circumstances a tax credit and/or tax deduction may be available to businesses to help cover the cost of making access improvements. (See Sections 44 and 190 of the Internal Revenue Code).
13. Defendant agrees that it shall perform the corrective actions that are identified as part of Exhibit A – Settlement Actions by the completion dates specified in Exhibit A.

IN WITNESS WHEREOF, the parties hereto execute this Consent Decree regarding ADA compliance for Disabled Patriots of America, Inc., a Florida Non Profit Corporation, and Marcus Ingram, Individually vs. NF Hotel, LLC, a New York Limited Liability Company, Case No.: 1:07-cv-0299-JTC to be effective on the date upon which the last signatories execute this Consent Decree. (JA)

PLAINTIFFS:

By: _____
Disabled Patriots of America, Inc.

Date: _____

By: _____
Marcus Ingram

Date: _____

DEFENDANT:

By: Joseph M. Anderson
NF Hotel, LLC

Date: 1/11/08

Consent Decree FINAL from oc & our revisions (jl 10-12-07)

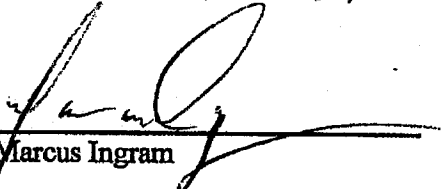
Decree approved
John T. Curre
USDC SDNY
1/28/08

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PLAINTIFFS:

By:  Date: 12/12/07
Disabled Patriots of America, Inc.

By:  Date: 12/1/07
Marcus Ingram

DEFENDANT:

By: _____ Date: _____
NF Hotel, LLC

Consent Decree FINAL from oc & our revisions (jl 10-12-07)

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PLAINTIFFS:

By: [Signature] Date: 12/12/07
Disabled Patriots of America, Inc.

By: _____ Date: _____
Marcus Ingram

DEFENDANT:

By: _____ Date: _____
NF Hotel, LLC

Consent Decree FINAL from oc & our revisions (jl 10-12-07)

EXHIBIT A

NF Hotel, LLC
Exhibit A - Settlement Actions

Settlement Item	Location	Element	Feature/Finding	Action/Comment	ADA-SAD (ABAAG)	Completion Date
A	First Street Parking	Secondary Parking Lot	Lot is remote from an entry, is mostly sloped in excess of 2%, and contains 22 parking spaces, none of which are accessible. Two spaces at the Rainbow Boulevard edge of the lot are adjacent to the sidewalk and nearly level.	When the two spaces at the Rainbow Boulevard edge to create 2 van accessible spaces with an access aisle between and a walkway from the aisle connecting to the street sidewalk.	4.6	1/1/2010
B	Rainbow Boulevard Parking	Primary Parking Lot	Lot is adjacent to an entry and contains 30 designated parking spaces, including 3 accessible spaces across from the entry doors. The accessible parking spaces do not have access aisles.	Reconfigure the existing three accessible spaces to provide 2 van size parking spaces with an access aisle between them.	4.6	7/1/2008
C	Rainbow Boulevard Parking	Primary Parking Lot	Parking space signs are low and visually obstructed by parked vehicles.	Raise the two signs to 60 inches minimum to bottom.	4.6.4	7/1/2008
D	Rainbow Boulevard Parking	Street Parking	2 accessible parking spaces on the street near the hotel entry.	Train valet parking staff to advise guests with disabilities regarding these spaces should the accessible lot spaces be full and to offer assistance in servicing the pay meters.	36.303	7/1/2008
E	Rainbow Boulevard - Hotel Entry	Entry Doors	Interior vestibule doors have 10-25 lbs. force with 3+ seconds closing speed. No threshold.	Adjust door closers to as close as reasonably possible to 5 lbs max force with 3 seconds minimum closing speed.	4.13.10 4.13.11	7/1/2008
F	Rainbow Boulevard - Hotel Entry	Entry Doors	Exterior vestibule doors have 10-25 lbs. force with 3 seconds closing speed. Threshold is accessible.	Adjust door closers to as close as reasonably possible to 8 lbs max force with 3 seconds minimum closing speed.	4.13.10	7/1/2008
G	First Street Hotel Entry	Walkway Approach from Blue Taxi Drop-Off/Valet Parking	Slope down to entry is 7.2% at top 8 feet adjacent to sidewalk, near 11 feet slope is 11% to a 3 foot deep level landing area which sunk about 2 inches.	Modify the entry area to reduce slope to 8.3% maximum. Entry could be moved back about 5-6 feet to reduce slope by alternating the outer portion. Add handrails at each side.	4.8	1/1/2010
H	First Street Hotel Entry	Walkway Approach from Blue Taxi Drop-Off/Valet Parking	Outer opening without doors has a 2 inch vertical high offset at threshold. A tapered board was installed.	Eliminate the board and vertical offset. (See Settlement Item G)	-	1/1/2010
I	Lobby Level Large Meeting Room	Entry Doors	2 pair of 36 inch wide doors with push/pull hardware. Closer has 12 lbs. force with 1 second closing speed.	Adjust closer to as close as reasonably possible to 5 lbs max force with 3 seconds minimum closing speed.	4.13.10 4.13.11	7/1/2008
J	Men's Restroom at Large Lobby Meeting Room	Entry Door	Signage is on the door face and not tactile.	Add tactile room name signage and signage indicating the location of the adjacent unisex accessible restroom. (See Settlement Item L)	4.30	1/1/2010
K	Women's Restroom at Large Lobby Meeting Room	Entry Door	Signage is on the door face and not tactile.	Add tactile room name signage and signage indicating the location of the adjacent unisex accessible restroom. (See Settlement Item L)	4.30	1/1/2010
L	Restroom Area at Large Lobby Meeting Room	Coat Room	Used for storage	Change the coat room to a unisex restroom and provide an accessible route from the lobby.	4.1.6 (3) (e)	7/1/2008
M	Lobby/Restaurant Men's Restroom	Entry Door	Signage is on the door face and not tactile.	Add tactile room name signage.	4.30	7/1/2008
N	Lobby/Restaurant Men's Restroom	Entry Door	Signage is on the door face and not tactile.	Add tactile room name signage.	4.1.6 (3) (e)	1/1/2010
O	Lobby/Restaurant Men's Restroom	Entry Door	Closer requires 11 lbs. with 3+ second closing speed.	Adjust closer to as close as reasonably possible to 5 lbs max force with 3 seconds minimum closing speed.	4.13.10 4.13.11	7/1/2008
P	Lobby/Restaurant Men's Restroom	Lavatory	Knee clearance not accessible. Counter top is 31 inches high.	Modify the lavatory to be 34 inches high maximum, with accessible knee clearance and insulated pipes.	4.19	7/1/2008
Q	Lobby/Restaurant Men's Restroom	Lavatory	Mirror is 56 inches high to bottom reflective edge.	Provide a mirror with bottom reflective edge at 40 inches high maximum.	4.19	7/1/2008
R	Lobby/Restaurant Men's Restroom	Water Closets (2)	One ambulatory type stall, 39-1/2 inches wide.	Add a pull to the outside face of the stall door.	4.17.5	7/1/2008
S	Lobby/Restaurant Men's Restroom	Alarm	No visual alarm.	At the time of the next alarm system upgrade, add a visual alarm.	4.1.3 (14)	7/1/2008
T	Lobby/Restaurant Women's Restroom	Entry Door	Signage is on the door face and not tactile.	Add tactile room name signage.	4.30	7/1/2008
U	Lobby/Restaurant Women's Restroom	Entry Door	Signage is on the door face and not tactile.	Add ISA signage indicating the location of an accessible unisex restroom with a side transfer water closet at the meeting room area. (See Settlement Item L)	4.1.6 (3) (e)	1/1/2010

Settlement Item	Location	Element	Feature/Finishing	Action/Comment	ADA-SAID (ADAA/G)	Completion Date
V	Lobby/Restaurant Women's Restroom	Entry Door	Door closer 10 lbs, 3+ seconds	Adjust closer to as close as reasonably possible to 5 lbs max force with 3 seconds minimum closing speed.	4.13.10 4.13.11	7/1/2008
W	Lobby/Restaurant Women's Restroom	Lavatory	31-1/2 inch high top.	Modify the lavatory to be 34 inches high maximum, with accessible knee/clearance and translated pipes.	4.19	7/1/2008
X	Lobby/Restaurant Women's Restroom	Lavatory	54 inch high mirror	Provide a mirror with bottom reflective edge at 40 inches high maximum.	4.19	7/1/2008
Y	Lobby/Restaurant Women's Restroom	Water Closet Stalls (3)	1 ambulatory type 38-1/2 inch wide	Relocate dispenser away from grab bar 12 inches minimum above or 1 1/2 inches minimum below.	4.26	7/1/2008
Z	Lobby/Restaurant Women's Restroom	Water Closet Stalls (3)	1 ambulatory type 38-1/2 inch wide	Add a pull to outside face of the outside stall door.	4.17.5	7/1/2008
AA	Cigar Lounge Access from Lobby Elevators	Entry From Elevator Lobby	Signage is not tactile	Add tactile room name signage.	4.1.3 (16) (e)	7/1/2008
AB	Restaurant	First Street Entry	Walkway from First Street sidewalk slopes 5%. Landing at door is deteriorated and sunken at the threshold and about 3 feet deep.	Reconstruct the landing to provide a 5 foot deep level area and accessible threshold.	4.13.6	1/1/2010
AC	Restaurant/Bar	Self-Serve Breakfast Buffet Area	Self service unit is 36 inches high. Circulation around it is accessible. Adjacent auxiliary tables for food presentation are 30 inches high.	Install ISA signage indicating table service is available on request.	36.303	7/1/2008
AD	Restaurant/Bar	Outdoor Patio Off Breakfast Area	Part of 36 inch doors. Closer 12 lbs/2 sec. Slight concrete offset at exterior side.	Add walk-off mat at exterior side to provide a flush transition at the threshold.	4.13.6	7/1/2008
AE	Ramp to Wedding Chapel and	Handrail	Handrail is on one side only and 2 inches in diameter	Add horizontal extensions at the top & bottom.	4.26	7/1/2008
AF	Ramp to Wedding Chapel and	Handrail	Handrail is on one side only and 2 inches in diameter	Add a handrail on the other side.	4.26	7/1/2008
AG	Wedding Chapel	Entry	Signage is on the door face and not tactile.	Provide room name tactile signage at the strike side of the door.	4.30	7/1/2008
AH	Caternet Meeting Room	Entry Door	Signage is on the door face and not tactile.	Provide tactile signage at the strike side of the door.	4.30	7/1/2008
AI	Caternet Meeting Room	Entry Door	Round knob door hardware.	Change to lever handles.	4.13.9	7/1/2008
AJ	Caternet Meeting Room	House Phone	62 inch high to top buttons.	Lower to 48 inches to top buttons.	ADN/ABA-AG	7/1/2008
AK	Caternet Meeting Room	House Phone	No volume control	Provide a volume control handset.	4.31	7/1/2008
AL	Stairs Adjacent to Front Desk for Access to Level 1 Guestrooms	Handrails	No elevator access to this level.	Provide horizontal handrail extensions at the top and bottom where walls exist.	4.2.6	7/1/2008
AM	Level 1 Guestroom Corridor	Guest Laundry Room	This level is not accessible.	Relocate the laundry to be on an accessible route.	4.1.2 (1)	1/1/2010
AN	Elevators	Tactile Floor Indicators at Hoistway Entrances	Braille is not provided below floor numbers. Some numbers are missing.	Provide raised floor numbers with Braille below at all hoistway entrance elevator door lands.	4.10.5	7/1/2008
AO	Elevators	Emergency Communications	Phone in cabinet.	Change to audible/visual device. If in a cabinet, provide accessible handle.	4.10.14	7/1/2008
AP	Guestrooms	Accessible Guestrooms	The hotel has approximately 211 total guestrooms, including 12 accessible guestrooms, all similar quality and all with tub. Pull side clearance is 8 inches wide.	The ADA ultimately requires 10 accessible guestrooms for a hotel of this size, including 3 with a roll-in shower. Modify the existing accessible guestrooms and modify one suite to be accessible as noted below.	9.2	1/1/2010
AQ	Existing Accessible Guestrooms	Entry Door	Shelf and hanger rods	Install automated door operators with automated latch release and emergency power back-up.	2.2 Fig. 25	7/1/2009
AR	Existing Accessible Guestrooms	Closet	Security latch is 39 inches high.	Slide/latch to provide 1/2 with a 48 inch high shelf and rod below and 1/2 at standard height.	9.2.2 (4)	7/1/2009
AS	Existing Accessible Guestrooms	Entry Door	Lavatory top is 32 inches high with 26 inch high knee clearance. Pipes are not insulated.	Lower to 48 inches.	4.13.9	7/1/2009
AT	Existing Accessible Guestrooms	Bath	Hair dryer	Insulate the pipes	4.19.4	7/1/2009
AU	Existing Accessible Guestrooms	Bath	Water closed side wall grab bars.	Lower to 48 inches high	ADN/ABA-AG	7/1/2009
AV	Existing Accessible Guestrooms	Bath	Tub/Shower head.	Relocate horizontally to extend to as close as practical to 34 inches from the rear wall.	Fig. 29	7/1/2009
AW	Existing Accessible Guestrooms	Bath	Tub	Modify to have a standard shower head plus a hand held shower head on a slide bar with a diverter valve control within accessible reach range.	4.21.6	7/1/2009
AX	Existing Accessible Guestrooms	Bath	Tub	Modify 2 of the tubs to have a roll-in shower.	9.1.2	1/1/2010
AY	Guestroom 400 - 401	Configuration	There are no accessible suites.	Modify one suite to be accessible with 2 beds and a bath with a roll-in shower.	9.2	1/1/2010